

MOD FOI/EIR Compliance Notes

Other FOI Issues and Considerations

CN58: Special Advisers (SpAds) involvement in scrutinising replies to requests for Information made under the FOI Act.

Document history

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What this is about:

Often referred to as “SpAds” special advisers provide a Minister with political advice and assistance where it would be inappropriate for traditional civil servants to be involved. SpAds are personal appointees of the Secretary of State employed as temporary civil servants. This note aims to provide guidance which needs to be taken into account when SpAds provide advice to officials and ministers on handling FOI business.

Detail:

- The Department needs to meet its Section 1 obligations under the FOI Act. As stated in the Civil Service Code - Standards of behaviour, under integrity, “staff must deal with the public and their affairs fairly, efficiently, *promptly*, effectively; and *comply with the law*” – which in this context means the FOI Act.
- Under the Act, there is no exemption to withhold information for political or presentational reasons. Under the Civil Service Code - Standards of behaviour, under objectivity, “staff must provide information and advice, including advice to ministers, on the basis of evidence, and accurately present the options and facts.”
- Although it is reasonable for SpAds to see and comment on responses to FOI requests with Whitehall-wide implications, or those where the release, or withholding, of certain information is likely to generate wider public or press interest, the statutory timescale for responding must not be disregarded. Delaying the release of information for presentational reasons is unacceptable.
- There is no precedence-setting in FOI – every request is handled on a case-by-case basis. For this reason, any suggestion from SpAds or indeed any other staff that withholding information solely on the grounds that its release would set a precedent is not a sustainable argument and would be likely to fail scrutiny on appeal.
- The use of private email accounts such as Gmail to send and receive information on Government business does not exempt it from the scope of the FOI Act. In a well-publicised FOI case handled by DfE, the Information Commissioner ruled that an email sent by a SpAd to a Minister using a private email account was within scope of the FOI Act.
- It is important to recognise that a requester can make a “meta data” request relating to an FOI request. As such information is unlikely to be exempt from disclosure under FOI (Ministry of Justice guidance precludes the use of s36) and care must be taken to ensure

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written advice from SpAds about the handling of any request always reflects adherence to the Civil Service Code and compliance with the FOI Act.